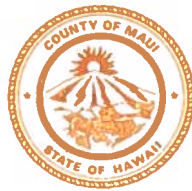


MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JACKY TAKAKURA
Deputy Director

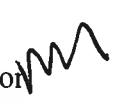


DEPARTMENT OF PLANNING
COUNTY OF MAUI
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2200 MAIN STREET, SUITE 315
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December 6, 2022

MEMORANDUM

TO: MS. P. DENISE LACOSTA, Chair
and Members of the Maui Planning Commission

FROM: MICHELE CHOUTEAU MCLEAN, AICP, Planning Director 

SUBJECT: **REVISED PROPOSED AMENDMENTS TO THE MAUI
PLANNING COMMISSION'S SPECIAL MANAGEMENT AREA
(SMA) AND SHORELINE RULES (ITEM B.3)**

The attached versions of the Commission's proposed SMA and Shoreline Rules include the following changes to the versions that were transmitted to you for the November 22, 2022 meeting. Most of these were included in the November 22, 2022 Memorandum that transmitted "additional proposed amendments."

Special Management Area Rules

1. The definition of "cumulative impact" or "cumulative effect" was amended as follows: "'Cumulative impact" or "cumulative effect" means the [impact] significant effect on the environment that results from the incremental impact of the proposed action...."

Rationale: the assessment of cumulative impacts relates to detrimental or adverse impacts, not neutral or beneficial impacts. Listed in the November 22, 2022 memo.

2. The definition of "erosion hazard line" was amended as follows: "The EHL and resulting setback may need to be updated to reflect future updates and reports based on best available science with such updates being subject to [adopted] adoption by the commission."

Rationale: Clarification per Corporation Counsel. This is a new change.

3. The definition of “nonstructural improvement” was amended as follows: ““Nonstructural improvement” or “nonstructural” is or describes any improvement, maintenance, repair[s] or renovation[s] which does not materially alter the load-bearing components essential to the stability of the overall structure....”

Rationale: this will allow for alterations such as painting or refinishing. Listed in the November 22, 2022 memo.

4. The definition of “shoreline” was amended as follows: ““Shoreline”, as defined in HRS section 205A-1 as amended, means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of ~~[natural rather than artificially induced]~~ vegetation growth, or the upper limit of debris left by the wash of the waves ~~[that has been certified by the board of land and natural resources for a duration determined by the board].~~”

Rationale: if amended as recommended, the definition would follow the exact wording as the definition provided in HRS 205A-1. Deleting the reference to vegetation would not change how the rule is administered, and deleting the shoreline certification would facilitate the administration and enforcement of the proposed Shoreline Rules amendments. Listed in the November 22, 2022 memo.

5. The definition of “significant effect” was amended as follows: “Significant effect” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, ~~[are contrary to the County’s or State’s environmental policies or long-term environmental goals as established by law,]~~ or adversely affect the economic welfare, social welfare or cultural practices of the community.”

Rationale: this language is over-reaching, given how broad many of the policies in our long-range plans are; projects will still be assessed for potential impacts and plan consistency. Listed in the November 22, 2022 memo.

6. The definition of “structural improvement” was amended as follows: ““Structural improvement” means any improvement that materially alters load-bearing components....”

Rationale: this follows the same amendment made to “non-structural improvement.” This is a new change.

7. **Section 12-202-11.5 was amended as follows:** “Those who propose any use, activity or operation pursuant to subsections k, l and m below in the special management area must complete, and submit to the department before the use, activity or operation is initiated, a declaration form, provided by the department and made accessible to the public, that may establish action-specific Best Management Practices and other appropriate restrictions.”

Rationale: the declaration must be submitted before the action is taken. Listed in the November 22, 2022 memo.

8. **Section 12-202-11.5 was amended to delete subsections f, h, i, and n, and reorder and amend references to these letters accordingly.**

Rationale: the uses described in these subsections (driveway and parking lot patching, site improvements involving grading or trenching, removal of debris, or protective measures; the latter two would likely be allowed under emergency proclamations) fall under the definition of “development” and do not clearly fall into any of the uses that are not considered “development” pursuant to HRS 205A-22. This is a new change.

9. **Section 12-202-11.5 was amended to add the following at the end of the section:** “Single-family dwellings shall not be considered a categorical exemption.”

Rationale: It is a good idea to state definitively that single-family dwellings need a SMA assessment. This is a new change.

10. **Section 12-202-16(a) and (c) was amended as follows:** change back to “...danger and [or] substantial harm...”

Rationale: the threshold for emergency permits should be for both danger and substantial harm. Listed in the November 22, 2022 memo (with errors).

11. **Section 12-202-23(b) and (d)(1) were amended** to improve the language and to require two attempts at serving Notices of Violation by mail or personal service before allowing posting on the property or publishing in the newspaper.

Rationale: to ensure compliance with applicable law, service of notices of violation should be attempted twice before posting on the property or in the newspaper. Listed in the November 22, 2022 memo (with the wrong section reference), with some new language per Corporation Counsel.

12. Section 12-202-26(b), (c) and (d) were amended by Corporation Counsel to correct language regarding enforcement.

Rationale: changes made per Corporation Counsel. These are new changes.

Shoreline Rules

1. The definition of “erosion hazard line” was amended in the same manner as described in the SMA Rule changes (see #2 above), per Corporation Counsel. This is a new change.

2. The definition of “nonconforming structure” was amended as follows: ~~“Nonconforming structure/activity, lawful” means a structure or activity [which was lawfully existing or established outside the shoreline area when it was originally constructed or initiated and is now inside the]~~ within the shoreline area and which either was built or initiated prior to June 22, 1970 or received all applicable and required permits....”

Rationale: The proposed amendment simplifies and clarifies the definition. Listed in the November 22, 2022 memo.

3. The definition of “nonstructural improvement” was amended in the same manner as described in the SMA Rule changes (see #3 above). Listed in the November 22, 2022 memo for SMA but is a new change for Shoreline.

4. The definition of “shoreline” was amended in the same manner as described in the SMA Rule changes (see #4 above). Listed in the November 22, 2022 memo.

5. The definition of “structural improvement” was amended in the same manner as described in the SMA Rule changes (see #6 above). Listed in the November 22, 2022 memo for SMA but is a new change for Shoreline.

6. Sections 12-203-6(b), 12-203-12(a)(7)(F), 12-203(a)(20) and 12-203-15(e)(6) and (7) were amended by deleting: ~~“[Any approval granted under this section shall include conditions that the owner of the property shall not implement measures that result in shoreline hardening and that conditions of approval shall be recorded with the Bureau of Conveyances.]”~~

Rationale: The rules should not prohibit someone from pursuing an action that they may wish to take in the future; the Department can require conditions to be recorded on a case-by-case basis. The first two sections were listed in the November 22, 2022 memo; the second two sections are new changes.

7. Section 12-203-10 was amended as follows: “Those who propose any use, activity, or operation pursuant to subsections g, h, i, j, and k below in the shoreline area must complete and submit to the department before the use, activity or operation is initiated a declaration form as provided by the department and made accessible to the public, that may establish action-specific Best Management Practices and other appropriate restrictions[;].”

Rationale: the declaration must be submitted before the action is taken. Listed in the November 22, 2022 memo.

8. Section 12-203-12(a)(7) was amended as follows: “... in manner that is proportional and directly related to damage by fire, insects, episodic natural disaster, accidental means, or [~~other~~] calamity...”

Rationale: the current language suggests that insects, for example, are a calamity. Listed in the November 22, 2022 memo.

9. Section 12-203-12(a)(15), relating to temporary events, was deleted as a permissible activity in the shoreline area.

Rationale: Per Corporation Counsel, this should not be regulated by the Shoreline Rules. This is a new change.

10. Sections 12-203-16(b) and (d)(1), relating to enforcement and serving Notices of Violation, were amended in the same manner as the SMA Rules (see #11 above). (d)(1) was listed in the November 22, 2022 memo; (b) is a new change.

11. Section 12-203-18 was amended to add detailed language about appeals that parallels the SMA Rules.

Rationale: The Shoreline Rules did not have detailed language on the appeals process; language was added by Corporation Counsel. This is a new change.

Regarding Section 12-203-12(a)(5), (6) and (7), the Department acknowledges that there is some degree of overlap, particularly if a valuation limit is imposed on section (7). When considering whether to impose a valuation limit on section (7), the Commission may also want to carefully consider whether to combine (5) and (6) and what, if any, valuation limit should be imposed. On one hand, property owners should be cautious in reinvesting substantially in properties within the shoreline setback; on the other hand, reinvestment should not be strongly discouraged.

Lastly, the Department requests that the Commission consider amending both sets of rules so that the order of the “no needs” are the same (Section 12-202-11.5 of the SMA Rules and Section 12-203-10 of the Shoreline Rules).

The Department recommends that the Maui Planning Commission approve the attached versions of the proposed amendments to the SMA and Shoreline Rules with the additional proposed amendments listed above.

MCM:atw

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